# PROCEDURE FOR SAFE DEPOSIT COMPANIES IN ATTACHMENT AND GARNISHMENT PROCEEDINGS.

IT MAY be correctly stated that attachment, garnishment and like proceedings are among the most technical known to the law. This is due to the fact that they are statutory remedies in derogation of the common law. They are of such drastic and summary nature that resort can be had to them only under extraordinary circumstances, and when employed, the warrants and subpœnas by which the remedies are enforced must be obtained and served strictly in compliance with all the provisions of the particular statute under the jurisdiction of which the proceedings are prosecuted. Because of the technicalities involved, together with the fact that there are variations between the statutes of the several States, it is believed that a technical treatise on any particular State statute or group of statutes would lead to confusion in different jurisdictions and also necessitate a much longer discussion than this article purports to give.

This discussion will, therefore, be confined to the outlining of a practical course of procedure which safe deposit companies may follow with safety in any jurisdiction when acting under the above proceedings.

## PURPOSE OF THE PROCEEDINGS.

Attachment statutes are designed for the protection of creditors against the secretion and dissipation of properties owned by absconding debtors attempting through various methods to avoid their obligations and remove from the jurisdiction of their creditors properties and effects from which such creditors could realize their claims.

Garnishment, trustee process and third party order statutes are designed to assist creditors in the discovery and sequestration of properties, rights and credits to defendant debtors.

When proceedings are instituted under these remedial statutes, there is no magic in safe deposit boxes which will afford immunity to the properties deposited therein against the proceedings and frustrate creditors in their remedy against absconding debtors. The fact that it takes two keys to open the safe deposit box, one being in the hands of the box renter and the other in the possession of the depository, or the fact that neither the box renter nor the depository has sole possession or control of the contents of the box, is of no avail for the safe deposit company to avoid or ignore a warrant of attachment and subpœnas issued under garnishee proceedings or trustee processes. In other words, debtors cannot avoid or defy their creditors by depositing their holdings in safe deposit boxes.

### ATTACHMENTS.

From what has just been said, it follows that safe deposit companies must in a manner which satisfies the statute involved, recognize and act on warrants of attachments when such warrants are served on them. The recognition, however, must in addition to satisfying the statute under which the warrant is issued, be of such a character as fully to protect the depository in its contractual duties of reasonable care to the box renter.

A warrant of attachment authorizes and commands the serving officer to seize and hold for further orders of the court all properties and effects within the officer's jurisdiction belonging to the person against whom the warrant runs (person here including company, corporation, etc.). When a warrant of attachment is served on a safe deposit company, the company should refuse, at that time merely upon the warrant itself, to open the box and deliver forthwith the contents thereof to the sheriff or officer making the service. The reasons for this are obvious. The warrant in various ways may be defective. The name set out in the warrant may be erroneous; the person against whom the warrant runs may have the same name and yet not be the same person who has a box rented in the vaults of the safe deposit company; there may be properties in

the box which do not belong to the renter; joint renters may own properties in the box, in which event the safe deposit company should not take the responsibility of separating out of the contents the properties owned by the person against whom the warrant runs.

In lieu of such delivery, the depository at the time the warrant is served should deliver to the serving officer an affidavit similar to the form hereinafter suggested, stating substantially that a person, bearing a name similar to the person named in the warrant of attachment, has leased a box in the vaults of the company, but that the company has no knowledge of, nor any means of determining whether, the person named in the warrant and the said box renter are the same person; that the contents and the ownership of the contents of the box are unknown to the company. If the box stands in the names of two joint renters, this fact should be stated.

After the service of the warrant, the box should be sealed and the box renter given immediate notice in substance as follows:

"This is to advise you that on the day of , 19 , a warrant of attachment running against you was served on this company on account of box No. standing in your name in our vaults. The box has been sealed pending the determination of the rights of all parties concerned.

"We shall expect you to take all necessary steps, legal or otherwise, to protect your interest and to save this company harmless of any expense which it may have to undertake on account of the said attachment or any proceedings connected therewith."

Such procedure would of necessity force the officer making the service to obtain from the court an order directing the safe deposit company either to seal up or open a specific box named in the order. The court would not grant an order with such direction, unless such notice of the application therefor were given to the depository. In response to the notice, the depository should appear at the hearing and insist that the order be

*not* granted, unless the company be amply protected by an establishment of the following facts: [1]

First, the ownership of the properties in the box.

Second, that the renter of the box and the person named in the warrant is the same person.

Third, that the order, if granted, shall instruct the depository to seal up the box in question, or to open same, make an inventory of the contents thereof, and re-deposit the contents in the company's vaults in a box under the name of the officer.

In the event that an order of such a nature be granted and served on the company, the company should in acting upon it proceed in the following manner:

(a) *Box Standing in the Name of One Person*: If the order directs the safe deposit company to seal up a specific box, this should be done in the presence of the officer serving the order. The depository should immediately thereafter give notice to the box renter of this action. The order and warrant of attachment afford sufficient protection to the company against complaint by the box renter for the sealing of the box.

If the order, instead of directing the depository to seal the box, directs it to open the same, make an inventory of the contents thereof, and re-deposit the contents in the company's vaults in a box under the name of the officer serving the warrant, then the box should be opened in the presence of the officer serving the order and a sufficient number of competent witnesses, and the contents of the box carefully inventoried.

A new lock should be put on the box and the box listed under the name of the officer, who should be granted the sole right of access; the contents should then be returned to the box and the officer given *both* keys thereto. The inventory, which

[1] "The desirability of following this particular suggestion will depend more or less on the surrounding facts and circumstances of each case. If, for example, the company knows that the box renter is not available for the hearing and for the protection of his own interest, the company should send its representative to lay the facts before the court. On the other hand, if the box renter is available for the hearing, reasons for appearance of the depository do not exist. In any event, the depository should always avoid involving itself unduly in the litigations of its box renters."

recites the securities taken from the box and witnesses the other steps suggested, should then be signed by all the persons witnessing the procedure. A copy of the inventory may be delivered to the officer, but the original should be retained by the company.

The depository should give immediate notice of such action to the box renter.

If the court grants an order which, instead of directing such procedure as named in the last two instances above, directs the depository to open the box in question and deliver the contents to the officer making the service, then, in that event, the company should endeavor to get the officer, of his own initiative, to deposit the securities in the vaults of the company in his own name. Should the officer agree to such a deposit, then the steps suggested in the last paragraph should be followed.

It can be readily understood what an advantageous position the safe deposit company would be in by adopting the courses of procedure suggested above, should it later develop that the moving papers were for any reasons defective or that the methods of execution were in any manner irregular. The company would have in its possession the securities and at the same time a complete inventory of the contents signed by the several competent witnesses showing that such contents were the same and the whole of the contents taken from the box opened on the strength of the order. The company would be protected by the order against the box renter's complaint of inconvenience, etc., due to a sealing of the box or the re-deposit of the contents in a box under the name of the serving officer; and the company would also be protected by the inventory against any bogus claims of the box renter for loss of securities.

It is submitted that the above suggestions are reasonable and safe for adoption by the officer serving the order and warrant in execution of his duties under attachment statutes and court orders.

It is entirely probable, however, that the officer serving an order which directs the safe deposit company to open a certain box and deliver to him the contents, will not consent to leave

the securities in the vaults of the depository in a box under his name, as above suggested, even though such officer be given a key to the box and a list of the securities deposited therein. Should the officer take such a position, the depository should then proceed as follows:

Open the box designated by the order in the presence of the officer and two or more competent witnesses; make a complete inventory of all the contents found therein, and deliver them to the officer, taking from him a receipt for all the securities delivered, a copy of the order and a copy of the affidavits upon which it was granted. The court order and receipt will afford the safe deposit company sufficient protection in this instance.

If the box renter owned all the property in the box, he could, of course, assert no valid complaint against the depository for having complied with the court order. Advice from the depository that a warrant of attachment was served on it puts the box renter on notice to assert in court his objections to the issuance of an order instructing the depository to open his box. If his objections are substantial and asserted at the proper time, the court will refuse to grant the order.

Suppose, however, that even though the box stands in the name of one box renter, part or all of the securities therein, unknown to the depository, belong to persons or interests other than the box renter. Will the safe deposit company be responsible to the unknown owner for a delivery of the securities to the officer serving the order? No. For the reason that there is no contractual obligation existing between the unknown security owner and the depository. Security owners cannot, unknown to the depository, put their securities in the box of box renters and hold the depository responsible for them. Their recourse, if any, is against the box renter. If the box renter has no valid complaint against the depository, it is evident that the unknown security holder has none.

(b) *Box Standing in the Name of Two Joint Renters*: If the *warrant of attachment runs against both co-renters,* and after the refusal of the depository to open the box on service of the warrant the court grants an order directing the company ei-

ther to seal up or open the box and deliver to the officer its contents, then the same course of procedure as suggested above under the heading "(a) Box Standing in the Name of One Person" should be followed.

If the warrant of attachment runs against only one of the joint box renters, then the depository, when the warrant is served, should state in the affidavit suggesed above, that it has no box in its vaults standing under such a name, but that a person bearing a name similar to the person named in the warrant of attachment is a joint renter of a box in its vaults. The depository should thereafter refuse under any circumstances to open such a jointly rented box, unless the moving papers and the proceedings run against both co-renters.

Warrants of attachment and orders issued in aid of their execution, which run against one co-renter, are no authority for opening a box which stands in the joint names of such co-renter and another party who is in no way connected with the proceedings.

Where an attempt is made to attach, on account of one joint renter, securities in a box standing in the names of two or more co-renters, the safe deposit company should refuse to open the box and in lieu thereof force all the parties to interplead.

(c) *Box Standing in the Name of Person as Agent or in other Fiduciary Capacity*: The same principle stated above as applicable to jointly rented boxes applies with reference to boxes standing in the name of a party as agent, executor, guardian, etc. Boxes so rented cannot be opened on the authority of warrants of attachment and orders issued in aid of their execution, where the warrants run against the box renter in his individual capacity. This is a fact which safe deposit managers must always bear in mind.

## Garnishment Proceedings, Trustee Processes, Third Party Orders, Etc.

Garnishment and like proceedings are auxiliary remedies by

which the plaintiff in an action seeks to reach and sequestrate the rights, properties and effects of defendants by calling into court some third party who is reputed to have such properties in his possession or who is indebted to the defendant.

In some of the New England and Western States, garnishment proceedings are denominated "trustee process". In Connecticut, the process is styled "factorizing process"; in Pennsylvania, "attachment execution"; and in New York "third party orders". Whatever the processes may be styled in the several jurisdictions, they are all of the same nature and are designed to the same end.

When safe deposit companies are served with subpœnas under such proceedings, a representative of the company should appear at the time and place designated and in answer to the interrogatories, give such information as he may have positive knowledge of regarding the box in question.

## Form to Be Submitted to Officer Serving Warrant of Attachment.

As the first step in carrying out the course of procedure suggested above for safe deposit companies to follow when served with warrants of attachment, the form of certificate given in footnote is recommended for use in the State of New York.[2] In States other than New York, the certificate will,

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[2] JOHN SMITH, ESQ.,
Sheriff County,
Sheriff's Office,
City.
JOHN DOE, Plaintiff,
—against—
RICHARD ROE, Defendant.

Dear Sir:—
Referring to the certified copy of warrant of attachment dated the day of , 19 , issued in the above-entitled action, and served on Company, on the day of , 19 , I, , Secretary and General Manager of the Company, do hereby certify as required by Sections 650 and 651 of the New York Code of Civil Procedure as follows:
That the Company has no knowledge

in many instances, have to be changed to meet the requirements of the particular State statute involved.

*Arnold R. Boyd.*

NEW YORK.

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of any property belonging to the defendant held for his benefit by said company; that a person bearing a name similar to the person named in the warrant of attachment has leased a box in the vaults of the company, but the company has no knowledge of, nor any means of determining whether the party in the warrant and the said box renter are the same individual; that the contents and the ownership of the contents of the said box are unknown to the
Company.

Yours truly,

(Signed) JOHN BROWN,

Secretary & General Manager,
Safe Deposit Company.